

REMARKS

Claims 1 to 11 are pending in the application.

On page 2 of the office action, claims 1-8 were rejected as being obvious over U.S. Patent 6,179,608 to Kraemer in view of U.S. Patent 7,241,137 to Leineman. It is believed that the Examiner meant to reject claims 1-9 for obviousness over Kraemer in view of Leineman since claims 9, 10 and 11 are mentioned specifically on pages 2-4 of the office action. This rejection is traversed.

U.S. Patent 7,241,137 to Leineman is NOT prior art to the claimed invention

On page 2 of the office action, the Examiner takes the position that U.S. Patent 7,241,137 will qualify as prior art against the instant claims. This is simply in error.

The present application was (1) filed prior to the filing date of U.S. Patent 7,241,137, (2) claims priority to a PCT application filed prior to the PCT priority date of U.S. Patent 7,241,137, and (3) ultimately claims priority to a Germany application filed prior to the Germany application relied upon by U.S. Patent 7,241,137

For comparison:

(1) U.S. Patent 7,241,137 stems from an application filed June 26, 2004 (the PCT filing date). In contrast, the present application was filed June 3, 2004 (the PCT filing date). One does not compare the PCT filing date of U.S. Patent 7,241,137 to the national stage filing date of the present application. Rather, the PCT filing dates are to be compared (not the Rule 371 national stage entry dates—This is why U.S. Patent 7,241,137 shows a filing date of June 26, 2004 which is the same as the PCT filing date).

(2) U.S. Patent 7,241,137 is based on PCT No. PCT/DE2004/001355 filed June 26, 2004. The present application was filed based on PCT//DE2004/001155 filed June 3,

2004.

(3) U.S. Patent 7,241,137 claims priority to German application 103 36 530 filed August 5, 2003. The present application claims priority to German application 103 26 150.6 filed June 6, 2003.

In short, U.S. Patent 7,241,137 is NOT prior art to the claimed invention and does not qualify as prior art. The fact that U.S. Patent 7,241,137 does not claim the same subject matter as the present application and does not constitute a viable reference for an obviousness type double patenting rejection does not change the fact that U.S. Patent 7,241,137 is NOT in any way prior art to the claimed invention.

It appears that the Examiner may have erroneously compared the effective filing date of U.S. Patent 7,241,137 or the Rule 371 filing date of U.S. Patent 7,241,137 with the Rule 371 filing date of the present application, as opposed to the effective filing date of the present application.

In view of this error, it should be clear that U.S. Patent 7,241,137 does not qualify as prior art, and that, therefore, the rejection of claims 1-11 for obviousness over Kraemer in view of U.S. Patent 7,241,137 should be withdrawn in view of this reason alone, and the case should proceed to allowance.

The analysis of the references is incorrect

A combined declaration of Christoph Leinemann and Thomas Heidermann under 37 C.F.R. §1.132 was submitted with the prior amendment on June 3, 2009. In that declaration, it was noted in section 8 that a key feature of the claimed invention is the provision of at least one concentric section of highly thermally conductive material that subdivides the flow cross section into a plurality of annular flow areas. This concentric section is formed as a solid without passage gaps and serves to limit impermissible heating in the radial inner region of the flame guard. Section 8 of the declaration provides test data and picture evidence which forms the basis for their opinion. Section 7 of the declaration demonstrates that the solid line separations 75

and hub 60 of Kraemer are not a "concentric annular section" and are not "sufficiently sized to dissipate heat in the concentric region within the flow cross section" as is required in the claimed invention.

The experimental evidence presented in the declaration refutes the position taken by the Examiner. However, the Examiner persists with the position even though the Examiner acknowledges that "Kraemer et al does not teach its separation for any use, such as heat dissipation or for the prevention of thermal conductivity between sections". The data presented in the previous response should not be ignored (it being improper to ignore evidence countering an erroneously assumed property), nor should the stated requirement that the concentric annular section be "sufficiently sized to dissipate heat in the concentric region within the flow cross section".

The "solid-line separations" (75) in Kraemer do not establish a concentric annular section; rather, they are necessary for the construction of a flame guard having gaps of a defined cross-section (which is a precondition for the function of the flame guard). If there was no smooth metal structure between the windings of the corrugated metal strip, the windings of the corrugated metal strip would not provide defined gaps. Therefore, the method of producing a flame guard by winding up a corrugated metal strip necessarily requires the common winding of a corrugated metal strip and a smooth metal strip as shown by Kraemer and Leineman.

However, these smooth metal strips are not concentric annular sections with the properties required in the claims. There is no hint or reason in either Kraemer or Leineman to form a massive annular section without gaps which annular section is sufficiently sized to dissipate heat.

The Examiner has correctly stated that Kraemer is completely silent about heat transfer. Consequently, it cannot be obvious from Kraemer to provide a flame guard with a concentric ring formation.

As noted in detail above, Leineman is not a valid reference against the claimed invention. Further, it should be clear that a massive concentric ring formation is not taught by Leineman. Leineman shows gaps over the whole cross section of the flame

guard. The modification of Leineman is that it provides smaller and wider gaps because they have different flow characteristics, and, consequently, different thermal characteristics. There is no indication in Leineman to provide a flame guard within the concentric section area with massive annular rings which serve for heat transfer and are without any gaps.

The basic principles of Kraemer and Leineman (it being recognized Leineman is not a reference for issues pertaining to obviousness) are set forth in the Rule 132 declaration of Christoph Leineman and Thomas Heiderman in paragraphs 6 and 7.

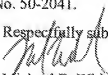
As neither reference provides for the solid annular section with the properties defined in the claims, there is no combinatory aspect which could lead one of skill in the art to the present invention in view of Kraemer and Leineman (it not being conceded that Leinemen is a valid reference)

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 1 to 11 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

A provisional petition is hereby made for any extension of time necessary for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,


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